

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 633

Introduced by Dierks, 40

Read first time January 17, 2007

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 54-2602,
2 54-2606, 54-2607, 54-2610, 54-2611, 54-2612, 54-2613,
3 54-2615, 54-2616, 54-2627, 54-2628, and 54-2629, Reissue
4 Revised Statutes of Nebraska, and section 54-2627.01,
5 Revised Statutes Cumulative Supplement, 2006; to change
6 and eliminate provisions of the Competitive Livestock
7 Markets Act; to eliminate penalties and certain Attorney
8 General duties; to harmonize provisions; to repeal the
9 original sections; and to outright repeal sections
10 54-2608, 54-2609, 54-2617, 54-2618, 54-2619, 54-2620,
11 54-2621, 54-2622, 54-2623, 54-2624, 54-2625, and 54-2626,
12 Reissue Revised Statutes of Nebraska.

13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 54-2602, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 54-2602 For purposes of the Competitive Livestock Markets
4 Act:

5 (1) Animal unit means one head of cattle, three calves
6 under four hundred fifty pounds, or five swine;

7 (2) Department means the Department of Agriculture;

8 (3) Director means the Director of Agriculture or his or
9 her designee;

10 (4) Livestock means live cattle or swine;

11 (5) Packer means a person, or agent of such person,
12 engaged in the business of slaughtering livestock ~~in Nebraska~~ in
13 excess of one hundred fifty thousand animal units per year; ~~and~~

14 (6) Person includes individuals, firms, associations,
15 limited liability companies, and corporations and officers or
16 limited liability company members thereof; ~~and -~~

17 (7) Swine contractor means a person engaged in the
18 business of obtaining live swine under a swine production or
19 marketing contract for the purpose of slaughtering the swine or
20 selling the swine for slaughter.

21 Sec. 2. Section 54-2606, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 54-2606 The proceeds from any livestock ordered to be
24 sold pursuant to section 54-2605 shall not be distributed until all
25 fines and costs associated with such action have been paid. All

1 money collected as a fine shall be remitted to the State Treasurer
2 for ~~credit to the permanent school fund.~~ distribution in accordance
3 with Article VII, section 5, of the Constitution of Nebraska. All
4 fines levied under this section remaining unpaid shall constitute
5 a debt to the State of Nebraska which may be collected by lien
6 foreclosure or sued for and recovered in any proper form of action,
7 in the name of the State of Nebraska, in the district court of the
8 county in which the violation occurred.

9 Sec. 3. Section 54-2607, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 54-2607 (1) It is unlawful for a packer or swine
12 contractor, with respect to purchasing or soliciting the purchase
13 of live cattle or swine in this state, to:

14 (a) Engage in or use any unfair, unjustly discriminatory,
15 or deceptive practice or device; or

16 (b) Make or give any undue or unreasonable preference
17 or advantage to any particular person or locality or subject
18 any particular person or locality to any undue or unreasonable
19 prejudice or disadvantage.

20 (2) For purposes of this section, undue or unreasonable
21 preference or advantage includes any practice or device by a
22 packer, a swine contractor, or a packer's or swine contractor's
23 agent or representative, including a single transaction, to
24 directly or indirectly procure livestock from a producer on terms
25 withheld from other producers unless such livestock is purchased

1 within two weeks of slaughter in a public market or other
2 competitive bidding process. Price premiums based on established
3 and recognized standards for product quality, time of delivery, and
4 production methods that enhance product value and can be reasonably
5 applied on a wide range of farm sizes shall not be considered an
6 unreasonable preference or advantage if such premiums are offered
7 in a manner that does not discriminate against any size or category
8 of producers.

9 Except as provided in sections 54-2608 and 54-2609, it
10 is unlawful for a packer purchasing or entering into a contract to
11 purchase swine to pay or enter into a contract to pay different
12 prices to the sellers of the swine. This section shall not be
13 construed to mean that a price or payment method must remain fixed
14 throughout any marketing period.

15 Sec. 4. Section 54-2610, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 54-2610 Any contract made by a packer or swine contractor
18 in violation of section 54-2607 is voidable by the seller.

19 Sec. 5. Section 54-2611, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 54-2611 A seller may bring an action against any packer
22 or swine contractor violating section 54-2607 to recover damages
23 sustained by reason of such violation.

24 Sec. 6. Section 54-2612, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 54-2612 Any packer or swine contractor acting in
2 violation of section 54-2607 is guilty of a Class IV misdemeanor
3 and shall be fined five hundred dollars per violation.

4 Sec. 7. Section 54-2613, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 54-2613 (1) A packer shall, two times each day during
7 which cattle are purchased, report to the department and to
8 the United States Department of Agriculture, agricultural market
9 service livestock news branch, all cattle that are purchased in
10 the cash, spot, or direct market for slaughter in this state
11 since the last report. A packer shall, one time each day during
12 which cattle are purchased, report to the department and to
13 the United States Department of Agriculture, agricultural market
14 service livestock news branch, all cattle that are purchased by
15 contract for slaughter in this state that day. Such reports shall
16 be completed on forms prepared by the department, in consultation
17 with the United States Department of Agriculture, agricultural
18 market service livestock news branch, and shall include:

19 (a) The cash price paid and the number of cattle
20 purchased at price intervals representative of the day's trade;

21 (b) Quality characteristics, including sex of the cattle,
22 estimated percentage of the meat which will be graded choice or
23 better upon inspection based upon the United States Department
24 of Agriculture official grades, and estimated live weight, as
25 well as premium and discount factors that may apply to these

1 characteristics;

2 (c) Base price and premium and discount factors for
3 cattle purchased using a formula or grid pricing mechanism; and

4 (d) The delivery month, volume, and applicable basis
5 level for all cattle purchased under basis contract.

6 The report shall not include information regarding the
7 identity of a seller.

8 (2) A packer or swine contractor Beginning February 15,
9 2000, a packer shall, two times each day during which swine are
10 purchased, report to the department and to the United States
11 Department of Agriculture, agricultural market service livestock
12 news branch, all swine that are purchased in the cash, spot, or
13 direct market for slaughter in this state since the last report. A
14 packer shall, one time each day during which swine are purchased,
15 report to the department and to the United States Department of
16 Agriculture, agricultural market service livestock news branch, all
17 swine that are purchased by contract for slaughter in this state
18 that day. Such reports shall be completed on forms prepared by the
19 department, in consultation with the United States Department of
20 Agriculture, agricultural market service livestock news branch, and
21 shall include:

22 ~~(1)~~ (a) The cash price paid and the number of swine
23 purchased in the cash, spot, or direct market at price intervals
24 representative of the day's trade;

25 ~~(2)~~ (b) The base price paid and premium and discount

1 payment adjustments for quality characteristics including grade,
2 yield, and backfat;

3 ~~(3)~~ (c) Base price and premium and discount factors for
4 swine purchased using a formula-based pricing system; and

5 ~~(4)~~ (d) The number of swine purchased under contract, in
6 which the date of delivery is set for more than fourteen days after
7 the making of the contract, and the base price to be paid or the
8 formula that will be used to determine the base price to be paid.

9 The report shall not include information regarding the
10 identity of a seller.

11 Sec. 8. Section 54-2615, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 54-2615 The failure of a packer or swine contractor to
14 report information to the department as required in section 54-2613
15 is punishable by a civil penalty not to exceed one thousand dollars
16 for each day that a complete report is not made available to the
17 department. The intentional reporting of false information by a
18 packer or swine contractor in the report to the department required
19 in section 54-2613 is a Class IV misdemeanor.

20 Sec. 9. Section 54-2616, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 54-2616 The Attorney General shall enforce the ~~provisions~~
23 ~~of sections 54-2607 to 54-2615,~~ Competitive Livestock Markets Act,
24 and the director shall refer any violations of these provisions
25 to the Attorney General. The Attorney General or any person

1 injured by a violation of ~~these provisions~~ the act may bring an
2 action in district court to restrain a packer from violating ~~these~~
3 ~~provisions.~~ the act.

4 Sec. 10. Section 54-2627, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 54-2627 The department shall assess a fee not to exceed
7 two cents per animal unit reported under ~~sections~~ section 54-2613
8 and ~~54-2623~~ as direct-purchased or contract-purchased.

9 Sec. 11. Section 54-2627.01, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 54-2627.01 (1) ~~Sections 54-2607 to 54-2627~~ are Section
12 54-2613 is preempted by the federal Livestock Mandatory Reporting
13 Act of 1999, 7 U.S.C. 1635 to 1636h, when such federal act is in
14 effect.

15 ~~(2)(a) If Congress does not reauthorize the federal~~
16 ~~Livestock Mandatory Reporting Act of 1999 before December 1, 2006,~~
17 ~~the director shall, on December 1, 2006, or as soon before or after~~
18 ~~as practicable, prepare a budget and an appropriation request from~~
19 ~~the General Fund, from the Competitive Livestock Markets Cash Fund,~~
20 ~~or from other cash funds under the control of the director, for~~
21 ~~submission to the Legislature in an amount sufficient to enable~~
22 ~~the department to carry out its duties under sections 54-2607 to~~
23 ~~54-2627, and such sections shall become applicable on October 1,~~
24 ~~2007.~~

25 ~~(b) (2) If, on or after December 1, 2006, Congress does~~

1 not reauthorize the federal Livestock Mandatory Reporting Act of
2 1999, the director shall prepare such budget and appropriation
3 request on or before a date that is twelve calendar months
4 after the date such federal act expires or is terminated, and
5 sections 54-2607 to 54-2627 shall become applicable on the first
6 day of the calendar quarter that is eighteen months after the
7 date such sections are not preempted by the federal act. No
8 General Funds shall be appropriated for implementation of sections
9 54-2607 to 54-2627 after the date of commencement provided for
10 in this section of reporting of price and other data regarding
11 livestock transactions pursuant to ~~sections~~ section 54-2613, and
12 ~~54-2623~~. It is the intent of the Legislature that any General Funds
13 appropriated for purposes of this section shall be reimbursed to
14 the General Fund.

15 Sec. 12. Section 54-2628, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 54-2628 The Competitive Livestock Markets Cash Fund
18 is created. The fund shall be administered by the department.
19 The fund shall consist of investigative and enforcement expense
20 assessments against violators of the Competitive Livestock Markets
21 Act and fees paid by a packer or swine contractor pursuant
22 to section 54-2627. The money in the fund shall be used to
23 defray the investigative, enforcement, and reporting expenses of
24 the department in administering the act. Any money in the fund
25 available for investment shall be invested by the state investment

1 officer pursuant to the Nebraska Capital Expansion Act and the
2 Nebraska State Funds Investment Act.

3 Sec. 13. Section 54-2629, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 54-2629 The department shall adopt and promulgate rules
6 and regulations to carry out ~~sections 54-2607 to 54-2628,~~ the
7 Competitive Livestock Markets Act.

8 Sec. 14. Original sections 54-2602, 54-2606, 54-2607,
9 54-2610, 54-2611, 54-2612, 54-2613, 54-2615, 54-2616, 54-2627,
10 54-2628, and 54-2629, Reissue Revised Statutes of Nebraska, and
11 section 54-2627.01, Revised Statutes Cumulative Supplement, 2006,
12 are repealed.

13 Sec. 15. The following sections are outright repealed:
14 Sections 54-2608, 54-2609, 54-2617, 54-2618, 54-2619, 54-2620,
15 54-2621, 54-2622, 54-2623, 54-2624, 54-2625, and 54-2626, Reissue
16 Revised Statutes of Nebraska.